Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 2001

WALTER BURRIER,

Petitioner,

versus

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

AND

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CALIFORNIA ATTORNEY GENERAL,

Real Parties in Interest.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

Walter Burrier
In Pro Per
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75pgs

QUESTIONS PRESENTED

1. May the state of California regulate how an attorney licensed only in Connecticut practices before a federal immigration court located in the state of California?

2. May the state of California regulate how an attorney licensed only in Connecticut works with non attorney consultants and assistants before federal immigration court and pursuant to that attorney's federal immigration practice?

LIST OF PARTIES

The parties herein:

Walter Burrier.....Petitioner

The Superior Court of the State of California For the County of
Los Angeles.....Respondent

PEOPLE OF THE STATE OF CALIFORNIA, AND THE CALIFORNIA ATTORNEY GENERAL.....Real Parties in Interest

MARK I.ROSE .....Defendant

HUESTON FORTNER.....Defendant

KAREN L. O'DONNELL .....Defendant

PATRICIA M. BOAG .....Defendant

JING RUGGLES .....Defendant

PETER A. NELSON .....Defendant

ASIAN PACIFIC LEGAL SERVICES
.....Defendant

WALTER WENKO .....Defendant

MIAO HUANG .....Defendant

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No.

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Walter Burrier.....*Petitioner ,*

The Superior Court of the State of California For the County of
Los Angeles.....*Respondent,*

PEOPLE OF THE STATE OF CALIFORNIA, AND THE CALIFORNIA ATTORNEY GENERAL.....*Real Parties in Interest.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

OPINIONS BELOW

The opinion sought to be reviewed is that of the Supreme Court of California in *Burrier vs. Los Angeles Superior Court*, 2001 (Court Number S103620) entered February 27, 2002. The

decision of the Supreme Court was not officially reported. The Supreme Court is the highest California appellate court.

The Supreme Court case was an appeal from The California Court of Appeals in *Burrier vs. Los Angeles Superior Court,* 2002 (Court Number No. B155058) entered January 3, 2002. The decision was not officially reported. The California Court of Appeals decision was an appeal of the trial court in *The People of the State of California v. Walter Wenko, et. al.* 2001 (Court Case No. BC 259057) ruling entered on December 4, 2001. The decisions of the Trial Court are not officially reported.

JURISDICTION

This is a case arising under The Immigration and Naturalization Act 8 U.S.C. Section 1158and The Immigration Consultants Act, California Business and Professions Code Sections 22440, et. seq. and California law regulating attorneys and various California laws regulating the practice of business only as applied to assisting immigrants to obtain benefits under United States Immigration law.

A petition for review was filed by the petitioner, January 11, 2002 before The Supreme Court of California.

The jurisdiction of the Supreme Court of the United States is conferred by Rule 10 of the

Supreme Court of the United States of America and 8 U.S.C. section 1329.

Additionally as 28 U.S.C. section 2403 (b) applies the petitioner is serving a copy of this petition on the Attorney General of California.

STATUTES

The statute primary to this case is the Immigration and Naturalization Act, 8 U.S.C. section 1158. California Law regulating non attorneys who assist aliens with immigration benefits is contained in The Immigration Consultants Act, California Business and Professions Code Sections 22440, et. seq.

STATEMENT OF THE CASE

The California Superior court, as upheld by the appellate courts, allowed the California Attorney General to bring a civil suit and maintain a preliminary injunction against an attorney, licensed in Connecticut, but not California, for alleged violations of California law.

The Attorney General claims that the petitioner herein as well as other licensed attorneys assisted non attorney " immigration consultants" with alien client's political asylum claims in violation of California law and assisted those consultants in the unauthorized practice of law. The Attorney General did not make any

claims that the petitioner herein is a non attorney immigration consultant or that is regulated by California law governing non attorney immigration consultants. They claim only that the petitioner assisted others in the unauthorized practice of law and in violating California law.

ARGUMENT

A. Facts

The petitioner is one of several defendants in a California state civil action and injunction request brought by the California Attorney General under a California law regulating non attorney consultants and California state laws concerning fair business practices. The allegations are divided among attorney defendants, which include the petitioner and other non attorney defendants. The Attorney General's civil complaint alleges that the non attorney defendants were assisting immigration clients violating regulations concerning immigration consultants and that the attorney defendants were assisting the non attorney defendants in the alleged violations. The Attorney General does not contend that the attorney defendants, including the petitioner, are regulated as immigration consultants, under California law.

The Attorney General of California also requested a preliminary injunction against all

defendants to stop alleged continuing violations of California law.

The petitioner is authorized to practice before the Immigration Court, Executive Office of Immigration Review under 8 C.F.R. section 1.1(f) and 8 C.F.R. section 292.1(a)(1) and subject to discipline under 8 C.F.R. section 292.3.

The complaint and request for injunction was filed on October 3, 2001. Petitioner, through separate counsel filed a motion to dismiss. The motion to dismiss was based on the following facts:

1) That at all times defendant Burrier was and is an attorney licensed to practice law before all courts in the State of Connecticut. He has never been licensed to practice law in California and has never requested permission to practice law within the state courts of the State of California.
2) Defendant Burrier's practice is strictly limited to federal immigration law. His sole authority to practice before the federal immigration court, is federal law and regulation. He has never received nor requested permission by any California agency including the State Attorney General, nor the California State Bar, nor the California State Legislature nor the California Supreme Court, for permission to practice before the federal immigration

court and to practice immigration law and such permission has never been required.

3) Although the complaint alleged that defendant Burrier is "substitute appearance attorney for Wenko", paragraph 9 of the complaint, and "was at all times mentioned herein agent, representative, or employee of Defendants Wenko and Hunag", paragraph 9 of the complaint, it must be noted that Defendant Burrier is licensed to appear before federal immigration court and needs no special permission by any defendant in this matter. Further, immigration court does not recognize the term " substitute appearance attorney" or any like phrase. Defendant Burrier was and is a licensed attorney authorized to practice immigration law before the immigration court. Further as an immigration attorney, he is a "representative and agent" of all persons he represents, under United States immigration law.
4) The plaintiffs alleged that defendant Burrier assisted the "non- attorney" defendants in the "unauthorized" practice of law, by allowing the "splitting of fees" and the assistance of non attorneys in the handling of legal matters, paragraphs 34 to 38 of the complaint. It should be noted that virtually every law firm in the world uses some non attorney assistance. Further immigration

law specifically allows non attorneys to appear and practice before immigration court.

The matter was heard by the trial court on December 3, 2001. Defendant's counsel specially appeared and argued. The court heard and denied the motion to dismiss on forum non convenience. Immediately after the motion was denied, the court heard argument on the preliminary injunction. Neither Defendant nor his counsel appeared and by law could not appear and neither argued the matter. The plaintiff argued that the defendant had defaulted by failing to provide a defense on the merits and the trial court agreed and issued the preliminary injunction against the defendant, even though no general appearance by the defendant was permitted.

A Writ of Mandate was filed with The California Court of Appeals on December 13, 2001 in Case No. B155058 because pursuant to California law the denial of a motion is not a final judgment. Said Writ was summarily denied on January 3, 2002. A Petition for Review was then filed with The Supreme Court of California on January 11, 2002 in case No. S103620. The Supreme Court of California is the highest appellate court in the State of California. The petition was summarily denied on February 27, 2002. The request for Writ of Certiorari to the

United States Supreme Court is thereby requested herein.

The Supreme Court of California is the highest California State Court and appeal to the United States Supreme Court is appropriate as all lower court relief has been exhausted.

Jurisdictional issues including the federal subject matter jurisdiction were raised in the state trial court by motion and through all stages of appeal.

B. California lacks subject matter jurisdiction over immigration procedure and therefore may not regulate attorneys or non attorney immigration consultants

1) The United States Government has the power to regulate immigration

The authority of Congress and the Federal Government to control immigration and foreign relations comes directly from the United States Constitution. The United States Constitution gives the Congress the power to regulate commerce with foreign nations, to establish uniform rules of naturalization, to provide for the general welfare, and to make all laws necessary and proper to carry out its powers. These specific

powers are found in The United States Constitution Section 8, Clause 1, The United States Constitution Section 8, Clause 3, The United States Constitution Section 8, Clause 4, and The United States Constitution Section 8, Clause 18. The power of the Federal Government in foreign affairs was also upheld in *United States v. Curtiss-Wright Corp.* 299 U.S. 304 (1936).

The United States Congress has the authority to regulate the practice of immigration. A state's power to regulate or restrict the practice of law before a federal court must yield to federal law. The United States Supreme Court in *Sperry v. Florida* 373 U.S. 379 (1963) so held. In Sperry, the petitioner was not an attorney, but practiced before the United States Patent Office located in Florida. The state of Florida obtained an injunction to prevent the petitioner from appearing before the Patent Office, as he was "engaged in the unauthorized practice of law" within the state of Florida.

The court held that Sperry did engage in the unauthorized practice of law as defined by Florida and that Florida's police powers did permit the state to regulate the unauthorized practice of law. Yet, despite the interest of Florida in protecting its citizens the court held that Florida's law must yield to the Federal Government. Citing *Gibbons v. Ogden* 9 Wheat 1,211 the court stated "But 'the law of the State, though enacted in the exercise of powers, not

contraverted, must yield' when incompatible with federal legislation....' *Sperry v. Florida* 373 U.S. 379 (1963).

The court stated clearly that no state could regulate a person granted a right to practice before a federal board. The court cited *Pennsylvania c. Wheeling & Bridge Co.* 13 How. 518, 566

> "The statute thus expressly permits the Commissioner to authorize practice before the Patent Office by nonlawyers, And the Commissioner has explicitly granted such authority. If authorization is unqualified, then by virtue of the Supremacy Clause, Florida may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority. A State may not enforce licensing requirements which, though valid in the absence of federal regulation, give 'the State's licensing board a virtual power of review over the federal determination' that a person or agency is qualified and entitled to perform certain functions

> or which impose upon the performance of activity sanctioned by federal license additional conditions not contemplated by Congress"

Sperry v. Florida 373 U.S. 379 (1963).

2) The states are pre-empted from regulating immigration legal practice

Once it has been determined that Congress has the power to regulate Immigration and Naturalization and that the police power of the State must yield to Congress, it must be determined whether or not Congress did in fact intend to pre-empt State law and prohibit malpractice actions, with regard to immigration, within state court. A leading case on pre-emption is *Medtronic v. Lohr* 518 US 470, 64 U.S.L.W. 4625 (1996). The United States Supreme Court held that for pre-emption to apply, the federal statute's language must show a "clear and manifest" purpose to pre-empt. The specific state action must threaten to interfere with a specific federal interest.

The United States Supreme Court has also decided a pre-emption case in which a common law tort action not specifically mentioned in federal law was pre-empted by the legislative

scheme. In *Cipollone v Liggett Group* 505 U.S. 504 (1992) the plaintiff brought a tort action against cigarette manufacturers, claiming they failed to warn him about the hazards of smoking. The defendant manufacturers claimed that any action under a state tort action was pre-empted by the federal labeling requirements. The court determined that the federal language that "No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising ...of cigarettes ... of which are lawfully labeled.", pre-empted the State court tort actions.

Viewing the law as applied to the facts herein, the Congress has passed significant legislation and regulation concerning immigration and the practice within the immigration court. Pursuant to federal regulations the federal government has set up a specific statutory scheme concerning exactly who may appear as a representative of another before the Executive Office for Immigration Review. 8 C.F.R. section 1.1(f) permits attorneys to appear regardless if they are licensed in the state where the court is located. 8 C.F.R. section 292.1(a)(2)-(5) provides for law students, reputable individuals, accredited representatives and accredited officials to appear. These individuals are all nonattorneys. If the federal law permits and regulates appearances, then common law actions or state actions against attorneys or non attorneys, or attorneys assisting

non attorneys must also be pre-empted by law and any state action must be prohibited and The Immigration Consultants Act, California Business and Professions Code Sections 22440, et. seq is therefore unconstitutional as in conflict with federal law.

C. United States Law bans any civil action or any other private actions against any person for filing or assisting in the filing for political asylum, including those actions by a state attorney general

Under Federal law 8 U.S.C. section 1158 (d)(7) no private action is permitted or created by the political asylum statute. This statute is in direct conflict with The Immigration Consultants Act, California Business and Professions Code Sections 22440, et. seq.The act is therefore unconstitutional.

D. California lacks personal jurisdiction over the petitioner

The United States Supreme Court has held that for personal state jurisdiction to apply a party must have "minimum contacts" with the forum state "such that the maintenance of the

suit does not offend `traditional notions of fair play and substantial justice". The court made this holding in *Shaffer v. Heitner* 433 US 186 (1977)applying *International Shoe Co. v. Washington*, 326 US 310 (1945). The court held that mere presence in the forum state is not enough.

In this case the petitioner has little else then physical presence in the forum state. The petitioner is a Connecticut attorney and has no license to practice law in California courts. His practice is strictly limited to immigration law in several states with an office in California. Nothing the petitioner has done avails him of any benefit in California and California has no interest in regulating his practice in courts which involve no California law or citizen. Even under California law, foreign attorneys are to be sued within their home state under their home state standard, *Credit Lyonais Bank Nederland v. F.L. Amhurst* 202 Cal. App. 3d. 1424, 249 Cal.Rptr. 559 (Cal.App.2 Dist. 1988).

There being no personal nor subject matter jurisdiction within the California courts, the petitioner requests that this court grant Certiorari and dismiss the action pending within the California State court.

CONCLUSION

There being neither subject matter nor personal jurisdiction against the defendant petitioner in California, this court should grant the writ and dismiss the California action pursuant to law.

REASONS FOR GRANTING THE WRIT

This case should be reviewed because it will prevent a California Court from exceeding its jurisdiction into United States Immigration Law. It will avoid the unnecessary expense and judicial waste of resources by ending an improper grant of judicial power over matters never entrusted to a state of the United States. The California action is an attempt by the attorney general and the state of California to override federal law. Further it is an attempt to discipline, via California Courts, an attorney who has never been licensed nor appeared in California Courts.

Dated this 14th Day of May, 2002

Walter Burrier
In Pro Per

Appendix

APPENDIX

APPENDIX – A Notice of Order from the Los Angeles, California Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Action No. BC259057

THE PEOPLE OF THE STATE OF CALIFORNIA,
- -Plaintiff

v.

WALTER WENKO, et al.
Defendants

ORDER---Entered December 5, 2001

To all parties and their attorneys of record:
Please take notice that on December 3, 2001 a hearing was held in Department 72 of the

Los Angeles Superior Court on (1) Plaintiff's motion for Preliminary Injunction, (2) Defendant Walter Burrier's Motion to Dismiss or Stay Action (Forum Non Conveniens) and (3) Defendants Walter Wenko and Miao Huang's Joinder to Walter Burrier's Motion to to Dismiss or Stay Action. Deputy Attorneys General Sabrina S. Kim and Christina Tusan appeared on behalf of Plaintiff, Tim McCandless appeared on behalf of Defendants Walter Wenko and Miao Huang; Lyle Mink appeared on behalf Defendant Mark Rose; Stephen Alexander appeared on behalf of Defendant Walter Burrier; Gerald Markle of Pansky and Markle appeared on behalf of Defendants Hueston, Patricia Boag, and Karen O'Donnell; and James Bianco appeared on behalf of Defendant Peter Nelson.

The Court considered the papers filed in support of and in opposition to the motions and the arguments of counsel appearing at the hearing. The court ruled as follows:

1. Plaintiff's Motion for Preliminary Injunction is GRANTED.1

2. Defendant Burrier's Motion to Dismiss or Stay Action and Defendant Wenko and Huang's Joinder thereto are DENIED.

3. The clerk is directed to enter the Preliminary Injunction forthwith.

4. Plaintiff is required to give notice of the Court's order to all parties by mail by close of business on December 5, 2001

c

DATED: December 4, 2001.

Bill Lockyer
Attorney General
/s/ Sabrina S. Kim
Attorney for the Plaintiff
The people of the State of California

1 Defendants Fortner, Boag, O'Donnell, and Nelson did not oppose Plaintiff's Motion and filed individual, signed stipulations for entry of the Preliminary Injunction.

Entered: December 5, 2001
cc: Counsel of Record

APPENDIX – B Decision of the California Court of Appeals, Summarily Denying the Writ

COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

---

d

Civil Action No. B155058

WALTER BURRIER - -Petitioner

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES - - - - -Respondent

AND

THE PEOPLE OF THE STATE OF CALIFORNA AND THE CALIFORNIA ATTORNEY GENERAL -
-Real Parties in Interest

ORDER---Entered January 3, 2002

The petition for Writ of Mandate is denied.

January 3, 2002

Entered: January 3, 2002
cc: Counsel of Record

APPENDIX – C Decision of the California Supreme Court, Summarily Denying Relief

SUPREME COURT OF CALIFORNIA
En Banc

Civil Action No. S101063

WALTER BURRIER - -Petitioner

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES - - - - -Respondent

AND

THE PEOPLE - -Real Parties in Interest

ORDER---Entered February 27, 2002.

Petition for review DENIED.

f

February 27, 2002

/s/ George
George
Chief Justice

Entered: February 27, 2002
cc: Counsel of Record

APPENDIX - D 8C.F.R. 292.1

TITLE 8--ALIENS AND NATIONALITY

CHAPTER I--IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 292--REPRESENTATION AND APPEARANCES--Table of Contents

Sec. 292.1 Representation of others.

(a) A person entitled to representation may be represented by any of the following:

(1) Attorneys in the United States. Any attorney as defined in Sec. 1.1(f) of this chapter.

(2) Law students and law graduates not yet admitted to the bar. A law student who is enrolled in an accredited law school, or a law graduate who is not yet admitted to the bar, provided that:

(i) He or she is appearing at the request of the person entitled to representation;

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a

legal aid program or clinic conducted by a law school or non-profit organization, and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents; and

(iv) The law student's or law graduate's appearance is permitted by the official before whom he or she wishes to appear (namely an immigration judge, district director, officer-in-charge, regional director, the Commissioner, or the Board). The official or officials may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative.

(3) Reputable individuals. Any reputable individual of good moral character, provided that:

(i) He is appearing on an individual case basis, at the request of the person entitled to representation;

(ii) He is appearing without direct or indirect remuneration and files a written declaration to that effect;

(iii) He has a pre-existing relationship or connection with the person entitled to representation (e.g., as a relative, neighbor, clergyman, business associate or personal friend),

provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(iv) His appearance is permitted by the official before whom he wished to appear (namely, a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself out to the public as qualified to do so.

(4) Accredited representatives. A person representing an organization described in Sec. 292.2 of this chapter who has been accredited by the Board.

(5) Accredited officials. An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his official capacity and with the alien's consent.

(6) Attorneys outside the United States. An attorney other than one described in Sec. 1.1(f) of this chapter who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he/she resides and who is engaged in such practice. Provided that he/she represents persons only in matters outside the geographical confines

of the United States as defined in section 101(a)(38) of the Act, and that the Service official before whom he/she wishes to appear allows such representation as a matter of discretion.

(b) Persons formerly authorized to practice. A person, other than a representative of an organization described in Sec. 292.2 of this chapter, who on December 23, 1952, was authorized to practice before the Board and the Service may continue to act as a representative, subject to the provisions of Sec. 292.3 of this chapter.

(c) Former employees. No person previously employed by the Department of Justice shall be permitted to act as a representative in any case in violation of the provisions of 28 CFR 45.735-7.

(d) Amicus curiae. The Board may grant permission to appear, on a case-by-case basis, as amicus curiae, to an attorney or to an organization represented by an attorney, if the public interest will be served thereby.

(e) Except as set forth in this section, no other person or persons shall represent others in any case.

APPENDIX - E 8 C.F.R. 292.3

TITLE 8--ALIENS AND NATIONALITY

CHAPTER I--IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 292--REPRESENTATION AND APPEARANCES--Table of Contents

Sec. 292.3 Professional conduct for practitioners--Rules and procedures.

(a) General provisions--(1) Authority to sanction. An adjudicating official or the Board of Immigration Appeals (the Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before the Service when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in Sec. 3.102 of this chapter. In accordance with the disciplinary proceedings set forth in part 3 of this chapter, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

(i) Expulsion, which is permanent, from practice before the Board and the Immigration

Courts or the Service, or before all three authorities;

(ii) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts or the Service, or before all three authorities;

(iii) Public or private censure; or

(iv) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

(2) Persons subject to sanctions. Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in Sec. 1.1(f) of this chapter who does not represent the federal government, or any representative as defined in Sec. 1.1(j) of this chapter. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to paragraph (i) of this section.

(b) Grounds of discipline as set forth in Sec. 3.102 of this chapter. It is deemed to be in the public interest for the adjudicating official or the Board to impose disciplinary sanctions as described in paragraph (a)(1) of this section against any practitioner who falls within one or more of the categories enumerated in Sec. 3.102 of this chapter, with the exception of paragraphs (k) and (l) of that section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed

in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law.

(c) Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify the Service of conviction or discipline--(1) Petition. The Office of the General Counsel of the Service shall petition the Board to suspend immediately from practice before the Service any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in Sec. 3.102(h) of this chapter, or who has been disbarred or suspended on an interim or final basis by, or has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or any Federal court. A copy of the petition shall be forwarded to the Office of the General Counsel of EOIR, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before the Service also apply to the practitioner's authority to practice before the Board or the Immigration Courts. Proof of service on the practitioner of EOIR's request to broaden the scope of any immediate suspension must be filed with the Board.

(2) Immediate suspension. Upon the filing of a petition for immediate suspension by the Office of the General Counsel of the Service, together with

a certified copy of a court record finding that a practitioner has been so found guilty of a serious crime, or has been so disciplined or has so resigned, the Board shall forthwith enter an order immediately suspending the practitioner from practice before the Service and/or the Board and Immigration Courts, notwithstanding the pendency of an appeal, if any, of the underlying conviction or discipline, pending final disposition of a summary proceeding, as provided in paragraph (c)(3) of this section. Such immediate suspension will continue until imposition of a final administrative decision. Upon good cause shown, the Board may set aside such order of immediate suspension when it appears in the interest of justice to do so. If a final administrative decision includes the imposition of a period of suspension, time spent by the practitioner under immediate suspension pursuant to this paragraph may be credited toward the period of suspension imposed under the final administrative decision.

(3) Summary disciplinary proceedings. The Office of the General Counsel of the Service shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (c)(1) of this section. Summary proceedings shall be initiated by the issuance of a Notice of Intent to Discipline, accompanied by a certified copy of the order, judgment and/or record evidencing the underlying criminal

conviction or discipline. Summary proceedings shall be conducted in accordance with the provisions set forth in Secs. 3.105 and 3.106 of this chapter. Any such proceeding shall not be concluded until all direct appeals from an underlying criminal conviction have been completed.

(i) In matters concerning criminal convictions, a certified copy of the court record, docket entry, or plea shall be conclusive evidence of the commission of that crime in any summary disciplinary hearing based thereon.

(ii) In the case of a summary proceeding based upon a final order of disbarment or suspension, or a resignation with an admission of misconduct, (i.e., reciprocal discipline), a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. Disciplinary sanctions shall follow in such a proceeding unless the attorney can rebut the presumption by demonstrating by clear, unequivocal, and convincing evidence that:

(A) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) There was such an infirmity of proof establishing the
practitioner's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or

(C) The imposition of discipline by the adjudicating official would result in grave injustice.

(4) Duty of practitioner to notify the Service of conviction or discipline. Any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in Sec. 3.102(h) of this chapter, or who has been disbarred or suspended by, or who has resigned with an admission of misconduct from, the highest court of any state, possession, territory, commonwealth, or the District of Columbia, or by any Federal court, must notify the Office of the General Counsel of the Service of any such conviction or disciplinary action within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending. Failure to do so may result in immediate suspension as set forth in paragraph (c)(1) of this section. This duty to notify applies only to convictions for serious crimes or to orders imposing discipline for professional misconduct entered on or after July 27, 2000.

(d) Filing of complaints; preliminary inquiries; resolutions; referral of complaints--(1) Filing of complaints--(i) Misconduct occurring before Service. Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior before the Service by a practitioner shall be filed with the Office of the General Counsel of the Service. Disciplinary complaints must be

submitted in writing and must state in detail the information that supports the basis for the complaint, including, but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. Any individual may file a complaint with the Office of the General Counsel of the Service. The Office of the General Counsel of the Service shall notify the Office of the General Counsel of EOIR of any disciplinary complaint that pertains, in whole or in part, to a matter before the Board or the Immigration Courts.

(ii) Misconduct occurring before the Board and the Immigration Courts. Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior before the Board and the Immigration Courts by a practitioner shall be filed with the Office of the General Counsel of EOIR pursuant to the procedures set forth in Sec. 3.104(a) of this chapter.

(2) Preliminary inquiry. Upon receipt of a disciplinary complaint or on its own initiative, the Office of the General Counsel of the Service will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry

and any subsequent proceeding based thereon. If the Office of the General Counsel of the Service determines that a complaint is without merit, no further action will be taken. The Office of the General Counsel of the Service may, in its discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner shall be notified of any such determination in writing.

(3) Resolutions reached prior to the issuance of a Notice of Intent to Discipline. The Office of the General Counsel of the Service, in its discretion, may issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(4) Referral of complaints of criminal conduct. If the Office of the General Counsel of the Service receives credible information or allegations that a practitioner has engaged in criminal conduct, the Office of the General Counsel of the Service shall refer the matter to the Inspector General and, if appropriate, to the Federal Bureau of Investigation. In such cases, in making the decision to pursue disciplinary sanctions, the Office of the General Counsel of the Service shall coordinate in advance with the appropriate investigative and prosecutorial authorities within the Department to ensure that neither the

disciplinary process nor criminal prosecutions are jeopardized.

(e) Notice of Intent to Discipline--(1) Issuance of Notice to practitioner. If, upon completion of the preliminary inquiry, the Office of the General Counsel of the Service determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in Sec. 3.102 of this chapter, it will issue a Notice of Intent to Discipline to the practitioner named in the complaint. This notice will be served upon the practitioner by personal service as defined in Sec. 103.5a of this chapter. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board.

(2) Copy of Notice to EOIR; reciprocity of disciplinary sanctions. A copy of the Notice of Intent to Discipline shall be forwarded to the Office of the General Counsel of EOIR. The Office of the General Counsel of EOIR may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Service also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of any request to

broaden the scope of the proposed discipline must be filed with the adjudicating official.

(3) Answer--(i) Filing. The practitioner shall file a written answer to the Notice of Intent to Discipline with the Board as provided in Sec. 3.105(c) of this chapter.

(ii) Failure to file an answer. Failure to file an answer within the time period prescribed in the Notice of Intent to Discipline, except where the time to answer is extended by the Board, shall constitute an admission of the allegations in the Notice of Intent to Discipline and no further evidence with respect to such allegations need be adduced. Upon such a default by the practitioner, the Office of the General Counsel of the Service shall submit to the Board proof of personal service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The Board shall adopt the recommended disciplinary sanctions in the Notice of Intent to Discipline and issue a final order as provided in Sec. 3.105(d) of this chapter. A practitioner may file a motion to set aside a final order of discipline issued pursuant to this paragraph, with service of such motion on the Office of the General Counsel of the Service, provided:

(A) Such a motion is filed within 15 days of service of the final order; and

(B) His or her failure to file an answer was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

(f) Hearing and disposition; appeal; reinstatement proceedings. Upon the filing of an answer, the matter shall be heard and decided according to the procedures set forth in Sec. 3.106(a), (b), and (c) of this chapter. The Office of the General Counsel of the Service shall represent the government. Reinstatement proceedings shall be conducted according to the procedures set forth in Sec. 3.107 of this chapter.

(g) Referral. In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the Office of the General Counsel of the Service may notify any appropriate Federal and/or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) shall be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice. In addition, the Office of the General Counsel of the Service shall transmit notice of all public discipline imposed under this rule to the National

Lawyer Regulatory Data Bank maintained by the American Bar Association.

(h) Confidentiality--(1) Complaints and preliminary inquiries. Except as otherwise provided by law or regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the Office of the General Counsel of the Service may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by a public disclosure before the filing of a Notice of Intent to Discipline.

(i) Disclosure of information for the purpose of protecting the public. The Office of the General Counsel of the Service may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(A) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the Office of the General Counsel of the Service may define the scope of information disseminated

and may limit the disclosure of information to specified individuals or entities;

(B) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(C) A practitioner is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such an authority;

(D) A practitioner is the subject of multiple disciplinary complaints and the Office of the General Counsel of the Service has determined not to pursue all of the complaints. The Office of the General Counsel of the Service may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner have been resolved.

(ii) Disclosure of information for the purpose of conducting a preliminary inquiry. The Office of the General Counsel of the Service, in the exercise of discretion, may disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(A) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(B) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(C) To agencies and other jurisdictions responsible for conducting disciplinary investigations or proceedings;

(D) To the complainant or a lawful designee; and

(E) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

(2) Resolutions reached prior to the issuance of a Notice of Intent to Discipline. Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline, will remain confidential. However, such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

(3) Notices of Intent to Discipline and action subsequent thereto. Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent disciplinary proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official or the

Board. Disciplinary hearings are open to the public, except as noted in Sec. 3.106(a)(v) of this chapter.

(i) Discipline of government attorneys. Complaints regarding the conduct or behavior of Department attorneys, Immigration Judges, or Board Members shall be directed to the Office of Professional Responsibility, United States Department of Justice. If disciplinary action is warranted, it shall be administered pursuant to the Department's attorney discipline procedures.

APPENDIX – F 8 C.F.R. 208.1 (a)

TITLE 8--ALIENS AND NATIONALITY

CHAPTER I--IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 208--PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL—

Subpart A--Asylum and Withholding of Removal

Sec. 208.1 General.

(a) Applicability. Unless otherwise provided in this chapter, this subpart shall apply to all applications for asylum under section 208 of the

Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in Sec. 208.16(d). Such applications are hereinafter referred to as ``asylum applications.'' The provisions of this part shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer, or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(5) and (c)(6) of the Act, and 8 CFR parts 3 and 103, where applicable.

APPENDIX – G 8 U.S.C. 1158

Sec. 1158. - Asylum

(a) Authority to apply for asylum

(1) In general
Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.
(2) Exceptions
(A) Safe third country Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.
(B) Time limit
Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien

demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

(C) Previous asylum applications

Subject to subparagraph (D), paragraph (1) shall not apply to an alien if the alien has previously applied for asylum and had such application denied.

(D) Changed circumstances

An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B). (3) Limitation on judicial review No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2). (b) Conditions for granting asylum

(1) In general

The Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Attorney General under this section if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title.

(2) Exceptions
(A) In general
Paragraph (1) shall not apply to an alien if the Attorney General determines that -
(i)
the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
(ii)
the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;
(iii)
there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;
(iv)
there are reasonable grounds for regarding the alien as a danger to the security of the United States;
(v)
the alien is inadmissible under subclause (I), (II), (III), or (IV) of section 1182(a)(3)(B)(i) of this title or removable under section 1227(a)(4)(B) of this title (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of section 1182(a)(3)(B)(i) of this title, the Attorney General determines, in the Attorney General's

discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi)

the alien was firmly resettled in another country prior to arriving in the United States.

(B) Special rules

(i) Conviction of aggravated felony

For purposes of clause (ii) of subparagraph (A), an alien who has been convicted of an aggravated felony shall be considered to have been convicted of a particularly serious crime.

(ii) Offenses

The Attorney General may designate by regulation offenses that will be considered to be a crime described in clause (ii) or (iii) of subparagraph (A).

(C) Additional limitations

The Attorney General may by regulation establish additional limitations and conditions, consistent with this section, under which an alien shall be ineligible for asylum under paragraph (1).

(D) No judicial review

There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) Treatment of spouse and children

A spouse or child (as defined in section 1101(b)(1)(A), (B), (C), (D), or (E) of this title) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same

status as the alien if accompanying, or following to join, such alien.
(c) Asylum status
(1) In general
In the case of an alien granted asylum under subsection (b) of this section, the Attorney General -
(A)
shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;
(B)
shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and
(C)
may allow the alien to travel abroad with the prior consent of the Attorney General.
(2) Termination of asylum
Asylum granted under subsection (b) of this section does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that -
(A)
the alien no longer meets the conditions described in subsection (b)(1) of this section owing to a fundamental change in circumstances;
(B)

the alien meets a condition described in subsection (b)(2) of this section;

(C)

the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien is eligible to receive asylum or equivalent temporary protection;

(D)

the alien has voluntarily availed himself or herself of the protection of the alien's country of nationality or, in the case of an alien having no nationality, the alien's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E)

the alien has acquired a new nationality and enjoys the protection of the country of his or her new nationality.

(3) Removal when asylum is terminated

An alien described in paragraph (2) is subject to any applicable grounds of inadmissibility or

deportability under section [1] 1182(a) and 1227(a) of this title, and the alien's removal or return shall be directed by the Attorney General in accordance with sections 1229a and 1231 of this title.

(d) Asylum procedure

(1) Applications

The Attorney General shall establish a procedure for the consideration of asylum applications filed under subsection (a) of this section. The Attorney General may require applicants to submit fingerprints and a photograph at such time and in such manner to be determined by regulation by the Attorney General.

(2) Employment

An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.

(3) Fees

The Attorney General may impose fees for the consideration of an application for asylum, for employment authorization under this section, and for adjustment of status under section 1159(b) of this title. Such fees shall not exceed the Attorney General's costs in adjudicating the applications. The Attorney General may provide for the

assessment and payment of such fees over a period of time or by installments. Nothing in this paragraph shall be construed to require the Attorney General to charge fees for adjudication services provided to asylum applicants, or to limit the authority of the Attorney General to set adjudication and naturalization fees in accordance with section 1356(m) of this title.

(4) Notice of privilege of counsel and consequences of frivolous application

At the time of filing an application for asylum, the Attorney General shall -

(A)

advise the alien of the privilege of being represented by counsel and of the consequences, under paragraph (6), of knowingly filing a frivolous application for asylum; and

(B)

provide the alien a list of persons (updated not less often than quarterly) who have indicated their availability to represent aliens in asylum proceedings on a pro bono basis.

(5) Consideration of asylum applications

(A) Procedures

The procedure established under paragraph (1) shall provide that -

(i)

asylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of

State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum;

(ii)

in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed;

(iii)

in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed;

(iv)

any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge under section 1229a of this title, whichever is later; and

(v)

in the case of an applicant for asylum who fails without prior authorization or in the absence of exceptional circumstances to appear for an interview or hearing, including a hearing under section 1229a of this title, the application may be dismissed or the applicant may be otherwise sanctioned for such failure.

(B) Additional regulatory conditions

The Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter.

(6) Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

(7) No private right of action

Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person

APPENDIX – H 8 U.S.C. 1329

The district courts of the United States shall have jurisdiction of all causes, civil and criminal, brought by the United States that arise under the provisions of this subchapter. It shall be the duty of the United States attorney of the proper district to prosecute every such suit when brought by the United States. Notwithstanding any other law, such prosecutions or suits may be instituted at any place in the United States at

which the violation may occur or at which the person charged with a violation under section 1325 or 1326 of this title may be apprehended. No suit or proceeding for a violation of any of the provisions of this subchapter shall be settled, compromised, or discontinued without the consent of the court in which it is pending and any such settlement, compromise, or discontinuance shall be entered of record with the reasons therefore. Nothing in this section shall be construed as providing jurisdiction for suits against the United States or its agencies or officers

APPENDIX – I CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 22440-22448 THE IMMIGRATION CONSULTANTS ACT

22440. It is unlawful for any person, for compensation, other than persons authorized to practice law or authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service, to engage in the business or act in the capacity of an immigration consultant within this state except as provided by this chapter.

22441. (a) A person engages in the business or acts in the capacity of an immigration consultant when that person gives nonlegal assistance or advice on an immigration matter. That assistance or advice includes, but is not limited to: (1) completing a form provided by a federal or state agency but not advising a person as to their answers on those forms; (2) translating a person's answers to questions posed in those forms; (3) securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms; (4) submitting completed forms on a person's behalf and at their request to the Immigration and Naturalization Service; and (5) making referrals to persons who could undertake legal representation activities for a person in an immigrationmatter.

(b) "Immigration matter" means any proceeding, filing, or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the United States Immigration and Naturalization Service, the United States Department of State or the United States Department of Labor.

(c) "Compensation" means money, property, or anything else of value.

(d) Every person engaged in the business or acting in the capacityof an immigration consultant shall only offer nonlegal assistance or

advice in an immigration matter as defined in subdivision (a). Any act in violation of subdivision (a) is a violation of this chapter.

22442. (a) Every person engaged in the business or acting in the capacity of an immigration consultant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by the Department of Consumer Affairs in regulations adopted by it.

(b) The written contract shall include provisions relating to the following:

(1) The services to be performed.

(2) The costs of the services to be performed.

There shall be printed on the face of the contract in 10-point bold type a statement that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs.

(c) The written contract shall not include provisions relating to

the following:

(1) Any guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise.

(2) Any statement that the immigration consultant can or will obtain special favors from

or has special influence with the United States Immigration and Naturalization Service.

(d) The provisions of the written contract shall be stated both in English and in the language of the client.

(e) The client shall have the right to rescind the contract within

72 hours of signing the contract. The contents of this subdivision shall be conspicuously set forth in the written contract in both English and the language of the client.

(f) A violation of this section is a misdemeanor.

(g) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients, free of charge or for a fee, including reasonable costs, consistent with that authorized by the United States Immigration and Naturalization Service for qualified designated entities, complete application forms in an immigration matter.

22442.2. (a) An immigration consultant shall conspicuously display in his or her office a notice that shall be at least 12 inches by 20 inches with boldface type or print with each character at least one inch in height and width in English and in the native language of the consultant's clientele, the following information:

(1) The full name, address, and evidence of compliance with any applicable bonding requirement including the bond number, if any.

(2) A statement that the consultant is not an attorney.

(b) Prior to providing any services, an immigration consultant shall provide the client with a written disclosure that shall include the immigration consultant's name, address, telephone number, agent for service of process, and evidence of compliance with any applicable bonding requirement, including the bond number, if any.

(c) (1) Except as provided in paragraph (2) or (3), an immigration consultant who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed, published, distributed, or broadcasted, any advertisement for services as an immigration consultant, within the meaning of Section 22441, shall include in that advertisement a clear and conspicuous statement that the immigration consultant is not an attorney.

(2) Notwithstanding paragraph (1), a person engaging in the business or acting in the capacity of an immigration consultant who is not licensed as an attorney in any state or territory of the United States, but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service, shall

include in any advertisement for services as an immigration consultant a clear and conspicuous statement that the consultant is not an attorney but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service.

(3) Notwithstanding paragraph (1), a person engaging in the business or acting in the capacity of an immigration consultant who is not an active member of the State Bar of California, but is an attorney licensed in another state or territory of the United States and is admitted to practice before the Board of Immigration Appeals or the United States Immigration and Naturalization Service, shall include in any advertisement for services as an immigration consultant a clear and conspicuous statement that the consultant is not an attorney licensed to practice law in California but is an attorney licensed in another state or territory of the United States and is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Immigration and Naturalization Service.

(4) If an advertisement subject to this subdivision is in a language other than English, the statement required by this subdivision shall be in the same language as the advertisement.

22442.3. An immigration consultant shall not, with the intent to mislead, literally translate, from

English into another language, the words or titles, including, but not limited to, "notary public," "notary," "licensed," "attorney," "lawyer," or any other terms that imply that the person is an attorney, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material describing the immigration consultant.

(b) For purposes of this section, "literal translation" of a word or phrase from one language means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(c) An immigration consultant may not make or authorize the making of any verbal or written references to his or her compliance with the bonding requirements of Section 22443.1 except as provided in this chapter.

22442.4. An immigration consultant shall notify the Secretary of State's office within 30 days of any change of name, address,telephone number, or agent for service of process.

22443. (a) A person engaged in the business or acting in the capacity of an immigration consultant shall deliver to a client a copy of each document or form completed on behalf of the client. Each document and form delivered must

include the name and address of the immigration consultant.

(b) A person engaged in the business or acting in the capacity of an immigration consultant shall retain copies of all documents and forms of a client for not less than three years from the date of the last service to the client.

(c) No person engaged in the business or acting in the capacity of an immigration consultant shall retain in his or her possession original documents of a client.

22443.1. (a) Prior to engaging in the business or acting in the capacity of an immigration consultant on or after January 1, 1998, each person shall file with the Secretary of State a bond of fifty thousand dollars ($50,000) executed by a corporate surety admitted to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to fifty thousand dollars ($50,000). The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or

failure to provide the services of the immigration consultant or the agents, representatives, or employees of the immigration consultant while acting within the scope of that employment or agency.

(c) The Secretary of State shall charge and collect a filing fee to cover the cost of filing the bond.

(d) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds.

(e) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients to complete application forms in immigration matters, either free of charge or for a fee. Any fees charged may include reasonable costs and shall be consistent with fees authorized by the United States Immigration and Naturalization Service for qualified designated entities.

22443.3. It is unlawful for any person to disseminate by any means any statement indicating directly or by implication that the person engages in the business or acts in the capacity of an immigration consultant, or proposes to engage in the business or act in the capacity of an immigration consultant, unless the person has on file with the Secretary of State a bond, in the amount and subject to the terms described in Section 22443.1, that is maintained

throughout the period covered by the statement, such as, but not limited to, the period of a yellow pages listing.

22444. It is unlawful for any person engaged in the business or acting in the capacity of an immigration consultant to do any of the following acts:

(a) Make false or misleading statements to a client while providing services to that client.

(b) Make any guarantee or promise to a client, unless the guarantee or promise is in writing and the immigration consultant has some basis in fact for making the guarantee or promise.

(c) Make any statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Immigration and Naturalization Service.

(d) Charge a client a fee for referral of the client to another for services which the immigration consultant cannot or will not provide to the client. A sign setting forth this prohibition shall be conspicuously displayed in the consultant's office.

22445. (a) A person who violates this chapter shall be subject to a civil penalty not to exceed one hundred thousand dollars ($100,000) for each violation, to be assessed and collected in a civil action brought by any person injured by the violation.

(b) In addition to the provisions of subdivision (a), a violation of this chapter is a misdemeanor punishable by a fine of not less than two thousand dollars ($2,000) or more than ten thousand dollars ($10,000), as to each client with respect to whom a violation occurs, or imprisonment in the county jail for not more than one year, or by both fine and imprisonment. However, payment of restitution to a client shall take precedence over payment of a fine.

(c) A second or subsequent violation of Sections 22442.2, 22442.3, and 22442.4 is a misdemeanor subject to the penalties specified in subdivisions (a) and (b). A second or subsequent violation of any other provision of this chapter is a felony punishable by imprisonment in state prison.

22446.5. (a) A person claiming to be aggrieved by a violation of this chapter by an immigration consultant may bring a civil action for injunctive relief or damages, or both. If the court finds that the defendant has violated a provision of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages or one thousand dollars ($1,000) per violation, whichever is greater. The court shall also grant a prevailing plaintiff reasonable attorneys' fees and costs.

(b) Any other party who, upon information and belief, claims a violation of this chapter has

been committed by an immigration consultant may bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, shall recover reasonable attorneys' fees and costs.

(c) An action brought under this chapter shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special preference may be given by law.

22447. (a) A person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, an immigration consultant, in the performance of his or her duties as an immigration consultant, may recover damages from the bond required by Section 22443.1.

(b) When any claim or claims against a bond have been paid so as to reduce the principal amount of the bond remaining available to pay claims below the principal amount required by Section 22443.1, the immigration consultant shall cease to conduct any business unless and until the bond has been reinstated up to the minimum amount required by Section 22443.1.

22448. Any civil action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of

action has accrued. The cause of action is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the violation.